

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**THOMAS E. MCGONIGLE,

Respondent.**

**Docket No. FMCSA-2008-0072¹
(Eastern Service Center)**

ORDER APPROVING SETTLEMENT AGREEMENT

On December 21, 2007, the New Hampshire Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued to Respondent, Thomas E. McGonigle, a Notice of Claim proposing a civil penalty of \$540 for one alleged violation of 49 CFR 382.501(a), for performing a safety-sensitive function after engaging in conduct prohibited by subpart B of Part 382.²

On January 10, 2008, Respondent replied to the Notice of Claim. Respondent denied the charge and requested administrative adjudication without specifying the form of administrative adjudication – submitting written evidence without a hearing, an informal hearing, or a formal hearing.³ On March 6, 2008, Claimant, the Field Administrator for the Eastern Service Center, FMCSA, submitted a Motion for Default and Final Agency Order (Motion for Default). Claimant contended that Respondent's failure to specify the form of administrative adjudication he was seeking constituted a failure to reply and, therefore, was a default.

On June 27, 2008, we issued an Order denying the motion for default and

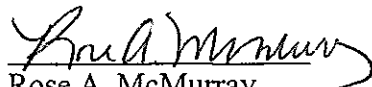
¹ The prior case number of this matter was NH-2008-0014-US1228.

² See Exhibit A to Claimant's Motion for Default and Final Agency Order.

³ See 49 CFR 386.14(d)(1)(iii).

requiring Claimant to submit his evidence; Claimant did so on August 18, 2008, reducing the amount of the proposed civil penalty to \$430. On October 3, 2008, Claimant submitted a Notification of Settlement, stating that all pending issues had been resolved; he requested, therefore, that the proceeding be dismissed and the docket be closed. Under the Settlement Agreement, which was executed by Respondent on September 30, 2008, and by Claimant on October 2, 2008, and adopted as a Final Order,⁴ Respondent agreed to pay \$350 no later than October 15, 2008.⁵ The parties agreed that execution of the Settlement Agreement constituted an admission of the violation set forth in the Agreement,⁶ which was the same violation alleged in the Notice of Claim. The Settlement Agreement is in the public interest.

Accordingly, *It Is Hereby Ordered That* Claimant's request is granted, the Settlement Agreement is the Final Order in this proceeding, the proceeding is dismissed, and the docket is closed.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

6-18-08
Date

⁴ See Settlement Agreement, paragraph 8; 49 CFR 386.22(a)(1)(vii).

⁵ See Settlement Agreement, paragraph 6.

⁶ See Settlement Agreement, paragraph 4.

CERTIFICATE OF SERVICE

This is to certify that on this 22 day of June, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Thomas E. McGonigle
19 Rollins Pond Road
Gilmanton, NH 03237

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U.S. Mail

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